



Attorney Docket No.: 2484 CON IX (203-3456 CON IX) **PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Fogarty et al. Examiner: Truong, Kevin Thao  
Serial No.: 10/790,373 Group Art Unit: 3731  
Filed: March 1, 2004 Dated: February 14, 2005  
For: **METHODS AND DEVICES FOR BLOOD VESSEL HARVESTING**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT TRANSMITTAL FORM**

Sir:

Transmitted herewith is an amendment in the above-identified application.

- ☐ Small entity status of this application under 37 C.F.R. § 1.9 and 1.27 has been established by a verified statement previously submitted.
- ☐ A verified statement to establish small entity under 37 C.F.R. § 1.9 and 1.27 is enclosed.
- ☒ No additional fee is required.

The fee has been calculated as shown below:

	(Col. 1)	(Col. 2)	(Col. 3)	SMALL ENTITY	OTHER THAN SMALL ENTITY
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	ADDIT. RATE FEE	ADDIT. RATE FEE
TOTAL	*18 MINUS **20	= 0	X	\$ 0	X \$ 0
INDEP.	* 5 MINUS ** 3	= 0	X	\$ 0	X \$ 0
□ FIRST PRESENTATION OF MULTIPLE DEP. CLAIM				X \$ 0	X \$ 0
				TOTAL	OR TOTAL \$ 0
				ADDIT. FEE	\$ -0-

- \* If the entry in Col. 1 is less than entry in Col. 2, write "0" in Col. 3.  
\*\* If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20".  
\*\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".  
The Highest No. Previously Paid For (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on date below.

Dated: February 14, 2005

Jennifer Puente

Adjustment Date: 06/15/2005 SDIRETA1  
03/15/2005 DBROOKS 00000001 502140 10790373  
01 FC:1814 110.00 CR

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Thomas J. Fogarty, et al.      Group Art: 3731  
Serial No: 10/790,373      Examiner: Kevin Thao Truong  
Filed: March 1, 2004      Date: April 12, 2005  
For: METHODS AND DEVICES FOR BLOOD HARVESTING

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attention: Mail Stop 16

**REQUEST FOR REFUND**  
**(Improper Charge of Deposit Account)**

**I. REFUND REQUEST**

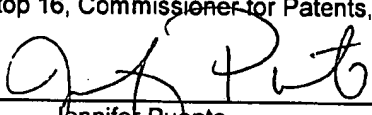
This is a request for a refund with respect to the charge to Deposit Account No. **50-2140** shown on the statement dated **March 2005** for the above-identified application.

A copy of the monthly statement in which the error referred to occurs accompanies this request as Exhibit A. Also enclosed are copies of the Amendment and Terminal Disclaimers and accompanying postcard as filed with the United States Patent and Trademark Office on February 14, 2005 as Exhibit B.

**CERTIFICATION UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: April 12, 2005

  
\_\_\_\_\_  
Jennifer Puente

II. FEES CHARGED FOR WHICH REFUND REQUESTED

AMOUNT OF REFUND  
REQUESTED

- ☐ filing fee
- ☐ surcharge for filing the basic filing fee  
on a date later than the filing date of the  
application (37 C.F.R. §1.16(e))  
  
and/or
- ☐ surcharge for filing the oath or declaration  
on a date later than the filing date of the  
application (37 C.F.R. §1.16(e))
- ☐ extension of term
  - ☐ first month
  - ☐ second month
  - ☐ third month
  - ☐ fourth month
- ☐ excess claims
- ☐ issue fee
- ☐ petition fee
- ☐ patent maintenance fee
  - ☐ first maintenance fee
  - ☐ second maintenance fee
  - ☐ third maintenance fee
- ☐ patent maintenance fee surcharge
- ☒ other: Terminal Disclaimer Fee

TOTAL REFUND REQUESTED

\$110.00

III. EXPLANATION OF WHY CONTESTED CHARGE IS IN ERROR

On February 14, 2005, we filed four Terminal Disclaimers with the United States Patent and Trademark Office and authorized the Patent Office to charge Deposit Account No. 21-0550 in the amount of \$520 for all four Terminal Disclaimers. However, the Patent Office charged Deposit Account No.: 50-2140 in the amount of \$110.00, identifying code 1814 the code for statutory disclaimers, as the reason for the charge.

The charge in question is in error because authorization was already given to charge Deposit Account No. 21-0550 for the entire amount of \$520 for all four Terminal Disclaimers.

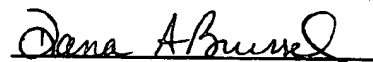
Please refund Deposit Account No.: 50-2140 in the amount of \$110.00 and provide an explanation for the charge.

IV. MANNER OF REFUND

Please make refund by

- ☒ crediting Deposit Account No. 50-2140  
☐ refunding payment.

Respectfully requested,

  
Dana A. Brussel, Esq.  
Reg. No. 45,717

**Carter, DeLuca, Farrell & Schmidt, LLP**  
445 Broad Hollow Road  
Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526

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**Deposit Account Statement**

**Requested Statement Month:** March 2005  
**Deposit Account Number:** 502140  
**Name:** CARTER DELUCA FARRELL & SCHMIDT, LLP  
**Attention:** PETER DELUCA  
**Address:** 445 BROAD HOLLOW ROAD  
**City:** MELVILLE  
**State:** NY  
**Zip:** 11747  
**Country:** UNITED STATES OF AMERICA

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
03/02	18	A0000842	1429-3 MADRID	7907	\$100.00	\$3,748
03/03	4	A0000849	1429-20MADRID	7901	\$100.00	\$3,648
03/07	142	10378509	761-32	2501	\$15.00	\$3,633
03/08	36	PCT/US03/14699		9204	-\$12.00	\$3,645
03/08	45	10502919	1423-4	2616	\$180.00	\$3,465
03/09	25	E-REPLENISHMENT		9203	-\$1,535.00	\$5,000
03/10	13	PCT/US05/06045	1400-45 PCT	8007	\$20.00	\$4,980
03/11	5	10694425		9204	-\$210.00	\$5,190
03/14	207	29225074	1516-3	2012	\$100.00	\$5,090
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03/14	209	29225074	1516-3	2312	\$65.00	\$4,975
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03/14	212	29225075	1516-2	2312	\$65.00	\$4,760
03/15	1	10790373	2484 CON IX (203-3456 CON	1814	\$110.00	\$4,650
03/15	1640	76443502	923-25	7904	-\$150.00	\$4,500
03/17	84	10924698		9204	-\$795.00	\$5,295
03/24	72	10924698	952-10 CIP	2253	\$510.00	\$4,785
03/25	5	60657970	1315-20 PRO 2	2085	\$125.00	\$4,660
03/25	11	11000866	1501-2 (2173-159)	2001	-\$395.00	\$5,055
03/25	12	11000866	1501-2 (2173-159)	2202	-\$135.00	\$5,190
03/25	13	11000866	1501-2 (2173-159)	2201	-\$88.00	\$5,278
03/25	14	11000866	1501-2 (2173-159)	1001	\$725.00	\$4,553
03/25	16	11000866	1501-2 (2173-159)	1202	\$270.00	\$4,283
03/25	17	11000866	1501-2 (2173-159)	1201	\$176.00	\$4,107
03/25	18	11000866	1501-2 (2173-159)	1051	\$130.00	\$3,977
03/25	26	10653770	2181 CON	1251	\$120.00	\$3,857

# Deposit Account Statement

Page 2 of 2

03/28 522	PCT/US04/26907	1400-35 PCT	1705	\$11.00	\$3,846
03/30 9	A0000842	1429-3 MADRID	7907	-\$100.00	\$3,946
03/30 10	Z1231586	1429-3 MADRID	7907	\$100.00	\$3,846
START		SUM OF	SUM OF		END
BALANCE		CHARGES	REPLENISH		BALANCE
\$3,848.00		\$3,272.00	\$3,270.00		\$3,846.00

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**PATENT OFFICE DATE STAMP WILL ACKNOWLEDGE RECEIPT OF:**

1. Amendment Transmittal (in duplicate);
2. Amendment;
3. Terminal Disclaimer To Obviate a Double Patenting Rejection  
Over a "Prior" Patent for Patent No.: 5,730,748;
4. Terminal Disclaimer To Obviate a Double Patenting Rejection  
Over a "Prior" Patent for Patent No.: 5,853,417;
5. Terminal Disclaimer To Obviate a Double Patenting Rejection  
Over a "Prior" Patent for Patent No.: 5,899,913;
6. Terminal Disclaimer To Obviate a Double Patenting Rejection  
Over a "Prior" Patent for Patent No.: 6,527,787;
7. Certificate of Mailing dated February 14, 2005

Applicants: Fogarty et al.  
Serial No.: 10/790,373  
Filed: March 1, 2004  
For: METHODS AND DEVICES FOR  
BLOOD VESSEL HARVESTING  
Docket: 2484 CON 9 (203-3456 CON IX)  
Dated: February 14, 2005  
DAB/jjp



**PATENT**

Atty. Docket No.: 2484 CON IX (203-3456 CON IX)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Fogarty et al.

Examiner: Truong, Kevin Thao

Serial No.: 10/790,373

Group Art Unit: 3731

Filed: March 1, 2004

Dated: February 14, 2005

For: **METHODS AND DEVICES FOR BLOOD VESSEL HARVESTING**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT TRANSMITTAL FORM**

Sir:

Transmitted herewith is an amendment in the above-identified application.

- ☐ Small entity status of this application under 37 C.F.R. § 1.9 and 1.27 has been established by a verified statement previously submitted.
- ☐ A verified statement to establish small entity under 37 C.F.R. § 1.9 and 1.27 is enclosed.
- ☒ No additional fee is required.

The fee has been calculated as shown below:

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	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	ADDIT. RATE FEE	ADDIT. RATE FEE
TOTAL	*18 MINUS ** 20	= 0	X	\$ 0	X \$ 0
INDEP.	* 5 MINUS ** 3	= 0	X	\$ 0	X \$ 0
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			X	\$ 0	X \$ 0
				TOTAL ADDIT. FEE	OR TOTAL \$ 0 \$ -0-

\* If the entry in Col. 1 is less than entry in Col. 2, write "0" in Col. 3.

\*\* If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20".


\*\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The Highest No. Previously Paid For (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

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Dated: February 14, 2005

  
Jennifer Puente



- ☐ Please charge Deposit Account No. 21-0550 in the amount of \$\_\_\_\_. Two (2) copies of this sheet are enclosed.
- ☐ A check in the amount of \$\_\_\_\_ is enclosed.
- ☒ Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefor. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

  
Dana A. Brussel, Esq.  
Reg. No. 45,717  
Attorney for Applicant(s)

**Carter, DeLuca, Farrell & Schmidt, LLP**  
445 Broad Hollow Road  
Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526

DAB/jjp

Appl. No. 10/790,373  
Amdt. dated February 14, 2005  
Reply to Office Action Mailed December 8, 2004

PATENT  
Atty. Docket: 2484 CON IX  
(203-3456 CON IX)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>APPLICANTS:</b>	Fogarty et al.	<b>EXAMINER:</b>	Truong, Kevin Thao
<b>SERIAL NO.:</b>	10/790,373	<b>GROUP UNIT:</b>	3731
<b>FILED:</b>	March 1, 2004	<b>DATED:</b>	February 14, 2005

**FOR: METHODS AND DEVICES FOR  
BLOOD VESSEL HARVESTING**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT**

Sir:

In response to the Office Action mailed on December 8, 2004, please amend the  
above-identified application as follows:

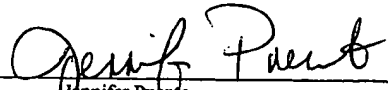
Amendments to the Claims are reflected in the listing of claims which begins on  
page 2 of this paper.

Remarks begin on page 8 of this paper.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

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an envelope, addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on  
February 14, 2005.

Dated: February 14, 2005

  
Jennifer Puente

The following listing of claims will replace all prior versions, and listings, of claims in the application:

**Listing of Claims:**

Claim 1 (currently amended): A method of harvesting a section of an artery from a body comprising the following steps:

providing a dissection cannula having a lumen and an endoscope inserted into said lumen;

inserting said dissection cannula through an incision in the body;

advancing said dissection cannula alongside the artery to dissect with said dissection cannula to create a space in body tissue, the space being at least partially occupied by said dissection cannula;

viewing via said endoscope;

providing a dissection tool separate from said dissection cannula; and

dissecting surrounding tissue from the artery by moving the dissection tool along the artery.

Claim 2 (previously presented): The method of claim 1 wherein said dissection cannula further comprises a balloon and said balloon is inserted into the body and inflated to cause additional dissection over that caused by the dissection cannula.

Claim 3 (previously presented): The method of claim 2 wherein said balloon is inverted and inflating said balloon causes said balloon to evert and advance along the artery.

Claim 4 (previously presented): The method of claim 1 further comprising the step of ligating and dividing side branches from the artery.

Claim 5 (currently amended): A method of harvesting a section of an artery from a body comprising the following steps:

- providing a dissection cannula having a lumen and an endoscope inserted into said lumen;
- inserting said dissection cannula through an incision in the body;
- advancing said dissection cannula alongside the artery to dissect with said dissection cannula to create a space in body tissue, the space being at least partially occupied by said dissection cannula;
- viewing via said endoscope;
- dissecting surrounding tissue from the artery by moving a dissection tool along the artery;
- and
- removing a section of the artery.

Claim 6 (currently amended): A method of harvesting a section of an artery from a body comprising the following steps:

- providing a blunt dissector having a lumen and an endoscope inserted into said lumen;
- inserting said blunt dissector through an incision in the body;
- advancing said blunt dissector alongside the artery to bluntly dissect with said blunt dissector to create a space in body tissue, the space being at least partially occupied by said blunt

dissector;

viewing via said endoscope;

providing a dissection tool separate from said blunt dissector; and

dissecting surrounding tissue from the artery by moving the dissection tool along the artery.

Claim 7 (currently amended): A method of harvesting a section of an artery from a body comprising the following steps:

providing a tunneling member having a lumen and an endoscope inserted into said lumen;

inserting said tunneling member through an incision in the body;

advancing said tunneling member alongside the artery to dissect with said tunneling member to create a space in body tissue, the space being at least partially occupied by said tunneling member;

viewing via said endoscope;

providing a dissection tool separate from said tunneling member; and

dissecting surrounding tissue from the artery by moving the dissection tool along the artery.

Claim 8 (previously presented): A method of harvesting an artery from a body comprising the following steps:

providing a dissection cannula having a lumen;

inserting an endoscope into said lumen of said dissection cannula;  
inserting said dissection cannula through an opening in the body and positioning the  
dissection cannula adjacent the artery;  
advancing said dissection cannula along the artery to create a space in body tissue, the  
space being at least partially occupied by said cannula;  
monitoring the advancing of said dissection cannula via said endoscope;  
removing said dissection cannula from the body;  
retracting the space to create a working space;  
inserting a trocar into the body;  
inserting a dissection tool through said trocar into the working space; and  
moving the dissection tool along the blood vessel to separate the artery from surrounding  
tissue.

Claim 9 (previously presented): The method of claim 8 wherein said step of retracting the space  
comprises the step of inserting an insufflation port into the body and insufflating the space via  
said insufflation port.

Claim 10 (previously presented): The method of claim 8 further comprising the steps of  
inserting an endoscope into the working space and monitoring the moving of the dissection tool  
along the artery.

Appl. No. 10/790,373

Amdt. dated February 14, 2005

Reply to Office Action Mailed December 8, 2004

Claim 11 (previously presented): The method of claim 8 wherein said dissection cannula has an inflatable member disposed on a distal portion of said dissection cannula.

Claim 12 (previously presented): The method of claim 11 further comprising the step of inflating said inflatable member.

Claim 13 (previously presented): The method of claim 8 wherein said trocar is inserted into the body after the step of removing said dissection cannula.

Claim 14 (previously presented): The method of claim 8 wherein said trocar is inserted into the body prior to the step of inserting said dissection cannula.

Claim 15 (previously presented): The method of claim 8 wherein said dissection tool comprises an elongate rod having a hook disposed on a distal end of said rod.

Claim 16 (previously presented): The method of claim 8 wherein the step of inserting the dissection cannula into the body adjacent the artery and advancing said cannula along the artery creates a space which is occupied entirely by the cannula.

Claim 17 (previously presented): The method of claim 8 wherein the step of removing said dissection cannula results in a space occupied by body tissue.

Appl. No. 10/790,373

Amdt. dated February 14, 2005

Reply to Office Action Mailed December 8, 2004

Claim 18 (currently amended): The method of claim 8 wherein said step of inserting said endoscope into said lumen of said dissection cannula is performed prior to inserting said dissection ~~cannula~~ cannula through an opening in the body.



**REMARKS**

The above-referenced application has been reviewed in light of the Office Action mailed December 8, 2004. By the present amendment, the Applicant has amended claims 1, 5-7, and 18. It is respectfully submitted that the claims now pending in the application, namely claims 1-18, do not introduce new subject matter, are fully supported by the application, and are patentable over the prior art. Prompt and favorable consideration of these claims is earnestly sought.

The Office Action rejected claims 1-7 under the judicially created doctrine of obviousness-type double patenting over claims 2-5 of U.S. Patent No. 5,730,748 to Fogarty et al. In response thereto, Applicants hereby submit a terminal disclaimer in accordance with 37 C.F.R. § 1.321(c) and the fee required under 37 C.F.R. § 1.20(d). It is respectfully submitted that the Office Action's obviousness-type double patenting rejection of claims 1-7 has been overcome.

The Office Action rejected claims 1-18 under the judicially created doctrine of obviousness-type double patenting over claims 1-3 of U.S. Patent No. 5,853,417 to Fogarty et al. In response thereto, Applicants hereby submit a terminal disclaimer in accordance with 37 C.F.R. § 1.321(c) and the fee required under 37 C.F.R. § 1.20(d). It is respectfully submitted that the Office Action's obviousness-type double patenting rejection of claims 1-18 has been overcome.

The Office Action rejected claims 1 and 6-18 under the judicially created doctrine obviousness-type of double patenting over claims 1-11 of U.S. Patent No. 5,899,913 to Fogarty et al. In response thereto, Applicants hereby submit a terminal disclaimer in accordance with 37 C.F.R. § 1.321(c) and the fee required under 37 C.F.R. § 1.20(d). It is respectfully submitted that

Appl. No. 10/790,373  
Amdt. dated February 14, 2005  
Reply to Office Action Mailed December 8, 2004

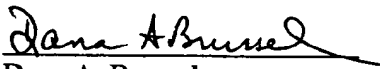
the Office Action's obviousness-type double patenting rejection of claims 1 and 6-18 has been overcome.

The Office Action rejected claims 1-7 under the judicially created doctrine of obviousness-type double patenting over claims 1-7 of U.S. Patent No. 6,527,787 to Fogarty et al. In response thereto, Applicants hereby submit a terminal disclaimer in accordance with 37 C.F.R. § 1.321(c) and the fee required under 37 C.F.R. § 1.20(d). It is respectfully submitted that the Office Action's obviousness-type double patenting rejection of claims 1-7 has been overcome. In response thereto, Applicants hereby submit a terminal disclaimer in accordance with 37 C.F.R. § 1.321(c). Please charge the fee required under 37 C.F.R. § 1.20(d) to Deposit Account 21-0550. **TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.**

Prompt and favorable action on these claims, namely claims 1-18, is earnestly requested. Should the Examiner desire a telephonic interview to resolve any outstanding matters, he is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

Carter, DeLuca, Farrell & Schmidt, LLP  
445 Broad Hollow Road - Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5713  
Fax: (631) 501-3526

  
Dana A. Brussel  
Reg. No. 45,717  
Attorney for Applicants

Send correspondence to:  
Chief Patent Counsel  
Tyco Healthcare Group  
150 Glover Avenue  
Norwalk, CT 06856

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TERMINAL DISCLAIMER TO OBIATE A DOUBLE PATENTING  
REJECTION OVER A "PRIOR" PATENT**

Docket Number (Optional)  
2484 CON IX (203-3456 CON IX)

In re Application of: Fogarty et al.

Application No.: 10/790,373

Filed: March 1, 2004

For: METHODS AND DEVICES FOR BLOOD VESSEL HARVESTING

The owner\*, General Surgical Innovations, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 5,730,748 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 45,717

Dana A Brussel  
Signature

February 14, 2005  
Date

Dana A. Brussel  
Typed or printed name

631-501-5713  
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING  
REJECTION OVER A "PRIOR" PATENT**Docket Number (Optional)  
2484 CON IX (203-3456 CON IX)

In re Application of: Fogarty et al.

Application No.: 10/790,373

Filed: March 1, 2004

For: METHODS AND DEVICES FOR BLOOD VESSEL HARVESTING

The owner, General Surgical Innovations, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 5,853,417 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 45,717

Dana A. Brussel  
Signature

February 14, 2005  
Date

Dana A. Brussel  
Typed or printed name

631-501-5713  
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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REJECTION OVER A "PRIOR" PATENT**Docket Number (Optional)  
2484 CON IX (203-3456 CON IX)

In re Application of: Fogarty et al.

Application No.: 10/790,373

Filed: March 1, 2004

For: METHODS AND DEVICES FOR BLOOD VESSEL HARVESTING

The owner, General Surgical Innovations, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 5,899,913 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

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Dana A. Brussel  
Signature

February 14, 2005  
Date

Dana A. Brussel  
Typed or printed name

631-501-5713  
Telephone Number

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In re Application of: Fogarty et al.

Application No.: 10/790,373

Filed: March 1, 2004

For: METHODS AND DEVICES FOR BLOOD VESSEL HARVESTING

The owner\*, General Surgical Innovations, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,527,787 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

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